No. 76-1349

In the Supreme Court of the United States

OCTOBER TERM, 1977

EDWARD W. MAHER, CONNECTICUT COMMISSIONER OF SOCIAL SERVICES, ET AL., APPELLANTS

v.

MARY BUCKNER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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This memorandum is submitted in response to the Court's order of May 23, 1977, inviting the Solicitor General to express the views of the United States.

STATEMENT

Section 17-85, Conn. Gen. Stat. Ann. (1975), provides that an otherwise eligible applicant under the federally assisted program of aid to families with dependent children (AFDC) (42 U.S.C. (and Supp. V) 601 *et seq.*) is entitled to benefits only "if such applicant has not made, within seven years prior to the date of such application for aid, an assignment or transfer or other disposition of property without reasonable consideration or for the purpose of qualifying for an award * * *." Section 17-109, Conn. Gen. Stat. Ann. (1975), places an identical condition upon eligibility for old

age assistance, including benefits under the federally assisted medicaid program (42 U.S.C. (and Supp. V) 1396 *et seq.*).[1]

Appellees filed these class actions for declaratory and injunctive relief against appellant Connecticut Commissioner of Social Services, contending that the above Connecticut statutes are inconsistent with the Social Security Act and thus invalid under the Supremacy Clause and that the statutes deprive them of due process and equal protection (J.S. App. A-2). Appellees Galonek and Bennett had been denied medicaid benefits under Section 17-109 because they had transferred property within the previous seven years for less than reasonable consideration (J.S. App. A-5 to A-6); appellees Huckle and Buckner had been denied AFDC benefits under Section 17-85 apparently because they could not prove that certain transfers of property within the previous seven years had been made for reasonable consideration (J.S. App. A-6 to A-7). Appellant has not contended that appellees acted fraudulently or transferred their property for the purpose of obtaining benefits (J.S. App. A-7 to A-8).

A three-judge district court was convened pursuant to 28 U.S.C. 2281. The court determined that it had jurisdiction over appellees' constitutional claims under 42

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[1]The Old Age Assistance program (OAA), established by Title I of the Social Security Act, 49 Stat. 620, as amended, 42 U.S.C. 301 *et seq.*, was repealed (with exceptions not relevant here) effective January 1, 1974. Section 303, 86 Stat. 1484. However, under Title XIX of the Act (providing for the establishment of medicaid programs), participating States have the option of providing medical assistance to one of the three categories of the aged described at 45 C.F.R. 248.1(b)(2) (i)-(iii). Connecticut has elected under 45 C.F.R. 248.1(b)(2)(iii) to provide medical assistance to "[i]ndividuals who meet the eligibility criteria used for medical assistance on January 1, 1972." Section 17-109, Conn. Gen. Stat. Ann. (1975), was a part of the eligibility criteria on that date and thus has a continuing importance despite repeal of Title I of the Act.

U.S.C. 1983 and 28 U.S.C. 1343 and thus proceeded to consider appellees' statutory claims under the doctrine of pendent jurisdiction. See *Hagans* v. *Lavine*, 415 U.S. 528. The court held the Connecticut statutes inconsistent with the Social Security Act to the extent that they deny eligibility for benefits solely because of a disposition of property without reasonable consideration. The court recognized, however, "the legitimate state need for strong legislative controls to curb fraudulent transfers undertaken for the very purpose of qualifying the property transferor for immediate welfare assistance" (J.S. App. A-3), and it left standing those portions of the statutes that deny benefits because of a disposition of property made "for the purpose of qualifying for an award" (J.S. App. A-15, n. 10). The court entered declaratory and injunctive relief in accordance with its opinion (J.S. App. A-16 to A-18).

DISCUSSION

The decision of the district court is correct and does not warrant this Court's plenary review.

The AFDC program, set forth in Title IV of the Social Security Act, 49 Stat. 627, as amended, 42 U.S.C. 601 *et seq.*, was enacted in 1935 to provide assistance to "needy dependent children." The medicaid program, enacted thirty years later in Title XIX of the Act, 87 Stat. 960, as amended, 42 U.S.C. (and Supp. V) 1396 *et seq.*, was intended to provide "necessary medical services" to certain needy individuals "whose income and resources are insufficient to meet the costs of * * * [those] services" (42 U.S.C. (and Supp. V) 1396). Both programs contemplate "a scheme of cooperative federalism" (*King* v. *Smith*, 392 U.S. 309, 316; see also *Shea* v. *Vialpando*, 416 U.S. 251), in which the states participate on a voluntary basis.

In view of the states' substantial role in the management and funding of these programs, this Court has expressed a reluctance to interfere with efforts "to assure that limited state welfare funds be spent on behalf of those genuinely incapacited and most in need, and to cope with the fiscal hardships enveloping many state and local governments." *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405, 413. Under appropriate circumstances states may impose on potential welfare recipients collateral conditions for eligibility that are required by administrative necessity or justified by underlying state welfare objectives. *Wyman* v. *James*, 400 U.S. 309; *New York State Department of Social Services* v. *Dublino, supra*. Such conditions "are not necessarily invalid, any more than other supplementary regulations promulgated within the legitimate sphere of state administration." *New York State Department of Social Services* v. *Dublino, supra*, 413 U.S. at 422. As this Court recently noted, "we should not lightly infer a congressional intention to preclude the Secretary from recognizing legitimate local policies in determining eligibility." *Batterton* v. *Francis*, No. 75-1181, decided June 20, 1977 (slip op. 15).[2]

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[2]The Secretary's regulations with respect to public assistance programs provide (45 C.F.R. 233.10(a)(1)(ii)(B)):

> A State may [i]mpose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance, if such conditions assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act.

The validity of this regulation has been sustained by the United States District Court for the District of Columbia. See *National Welfare Rights Organization* v. *United States Department of Health, Education, and Welfare*, No. 264-73 (January 28, 1976).

The conditions imposed by participating states nevertheless must be consistent with the terms and policies of the Act. *Carleson* v. *Remillard*, 406 U.S. 598; *Townsend* v. *Swank*, 404 U.S. 282; *King* v. *Smith*, *supra*. See also 42 U.S.C. (and Supp. V) 1396a. "[T]he Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and * * * any state law or regulation inconsistent with such federal terms and conditions is to that extent invalid." *King* v. *Smith, supra*, 392 U.S. at 333 n. 34. "[O]nce the federal standard of eligibility is defined, a participating State may not deny aid to persons who come within it in the absence of a clear indication that Congress meant the coverage to be optional." *Burns* v. *Alcala*, 420 U.S. 575, 580. Unless it can reasonably be inferred from the Act and its underlying principles that Congress intended to allow states to withhold benefits from a particular class of otherwise eligible recipients, the state restrictions must be held invalid and unenforceable.

As the purpose of the AFDC and medicaid programs is to help persons in genuine need, any limitation on eligibility imposed by the states must be narrowly cut to fit an important state objective that is itself consistent with the policies of the federal program. See *New York State Department of Social Services* v. *Dublino, supra*. With regard to both the AFDC and the medicaid programs the Social Security Act provides that participating states are to take into consideration the applicants' "income and resources." 42 U.S.C. (and Supp. V) 602(a)(7) and 1396a(a)(10). In turn, the Secretary's regulations provide that "income and resources will be reasonably evaluated." 45 C.F.R. 233.20(a)(3)(E) and 248.3(b)(1).

We believe that the Connecticut statutory provisions held invalid below do not effect a reasonable evaluation of resources. Those provisions deny benefits to otherwise

eligible persons who have transferred assets within the previous seven years for less than a "reasonable consideration," regardless of the circumstances of the transfer. Thus, admittedly needy persons can be denied assistance solely because they were defrauded, exchanged property for needed services not recognized as "reasonable consideration," or suffered unforseeable financial reversals after a good faith transfer, even though they had at the time no expectation, much less intention, of applying for government benefits. The provisions neither make allowance for mitigating circumstances nor permit applicants to offer any justification or excuse. Cf. *Lerner* v. *Division of Family Services, Department of Health and Social Services*, 235 N.W. 2d 478 (Sup. Ct. Wisc.). In our view, such an unqualified attribution of transferred assets to the transferor constitutes an unreasonable evaluation of the transferor's resources and therefore is contrary to the Social Security Act and the Secretary's regulations.[3]

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

SEPTEMBER 1977.

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[3] In their administration of the AFDC and medicaid programs, the states have a legitimate interest in preventing fraud and assuring the equitable distribution of available funds. That interest continues to be served by those portions of Connecticut's statutes that deny benefits to persons who transfer assets in order to become eligible for assistance. Those statutory provisions were left standing by the decision below, and their validity is not at issue. But the provisions held invalid below sweep too broadly to be justified as anti-fraud devices.